

1           None of that has happened here.  
2       We identified a buyer almost immediately.

3           Secondly, Ms. Leavitt I think is  
4       insinuating that, had Mr. Floyd advised her  
5       that he was in bankruptcy, there would be any  
6       difference. That's preposterous.

7           I would venture to say that no one  
8       in the Bureau would have said to Mr. Floyd,  
9       guess what, you can sell this pursuant to  
10      Second Thursday. That would not have happened  
11      and I don't think she's suggested that she  
12      would do that.

13          So what difference does it make if  
14      she would have known or wouldn't have known?  
15      Because you were not representing Mr. Floyd,  
16      so therefore you would not have told him what  
17      he could have availed himself of.

18          This is proceeding fairly rapidly.  
19      The trustee -- and this is a Chapter 7  
20      bankruptcy, as opposed to a Chapter 11 or  
21      Chapter 13.

22          ADMIN. JUDGE SIPPEL: Chapter 7 is

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1 the tougher one, right? That's when they come  
2 and get you.

3 MR. SHAINIS: Well, actually, I  
4 don't know that much about bankruptcy law.  
5 But I know more today than I knew two weeks  
6 ago.

7 ADMIN. JUDGE SIPPEL: The status  
8 reports may be all over.

9 Yes, sir.

10 MR. SHAINIS: Essentially, a  
11 Chapter 7 generally is an individual-type  
12 bankruptcy as opposed to corporate, et cetera.

13 The typical Chapter 7, of which  
14 there are hundreds of thousands going on in  
15 the country, even with the revised bankruptcy  
16 laws, is someone has \$30,000 worth of credit  
17 card debt. They decide to declare bankruptcy.  
18 They're, you know, whatever it is. They meet  
19 with a trustee in bankruptcy, they retain an  
20 attorney for \$1,200 and that's the end of it.

21 This is not your normal Chapter 7  
22 bankruptcy. First of all, typically they're

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1 voluntary. This is involuntary. That is a  
2 big difference.

3 ADMIN. JUDGE SIPPEL: That's the  
4 distinction I was trying to make.

5 MR. SHAINIS: Secondly, in a  
6 Chapter 7 bankruptcy, the bankruptcy trustee  
7 functions as a US magistrate in the federal  
8 courts system. The bankruptcy judge  
9 essentially just signs off on things.

10 What I've been advised is you hand  
11 the judge, you go through the schedules, and  
12 you say, I've vetted them and here, please,  
13 sign this. That's usually what happens.

14 In this case, I've been in touch  
15 with the bankruptcy trustee, whose name I've  
16 provided to you. He sent me an email this  
17 past Monday to advise me that there is a sale  
18 motion that he intends to present to the  
19 Bankruptcy Court for comment by the various  
20 creditors today.

21 As of last night, I was still  
22 refining that with him so I don't have the

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1 final version, what will be submitted. But  
2 once it is submitted, I will submit that along  
3 with the report.

4 It is anticipated that the motion  
5 will be granted. That's approximately a 30-  
6 to 45-day process.

7 At that point, an application  
8 would be filed with the Commission, along with  
9 a petition for extraordinary relief and then,  
10 in due course, this will be granted.

11 The Bureau, of course, would be  
12 able to file comments as well as Wilks.

13 There has not been a case in which  
14 someone who has tried to avail themselves of  
15 Second Thursday has been unable to do it.

16 ADMIN. JUDGE SIPPEL: I had an  
17 experience where it was --

18 MR. SHAINIS: That was after the  
19 hearing had started, as I recall.

20 ADMIN. JUDGE SIPPEL: Yes, it was,  
21 but it went up for consideration and it was  
22 sent back to me.

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1 MR. SHAINIS: Right.

2 ADMIN. JUDGE SIPPEL: Ultimately,  
3 they might have gotten it. Well, I'm not  
4 going to speculate, but I remember that  
5 specifically.

6 MR. SHAINIS: Right. I understand  
7 that.

8 But the important thing is the  
9 relief similar to distress sale must be -- you  
10 must avail yourself before the hearing  
11 commences. That's one of the tricky areas.  
12 But in any event --

13 ADMIN. JUDGE SIPPEL: When you say  
14 commence, does that mean the first day of  
15 testimony or when the HDO was issued?

16 MR. SHAINIS: No. I think it's  
17 well settled. It would be at the time  
18 exhibits are received into evidence, whether  
19 it be through testimonial evidence or exhibit  
20 evidence.

21 ADMIN. JUDGE SIPPEL: All right.  
22 I had no knowledge of that. But I'm sure that

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1 Ms. Leavitt will check that out, too.

2 I guess I'll say, where I am right  
3 now, I don't see anything in here or that I've  
4 heard this morning that impedes what we want  
5 to do. When I say what we want to do, I'm  
6 saying what's been outlined in the report.

7 I do share a little bit of the  
8 concern that Mr. Floyd did not disclose that.  
9 I'll tell you why.

10 One thing, for example, for one  
11 purpose is that it seemed like that was the  
12 center-stage act that was going on in his life  
13 at that time. The bankruptcy would really hit  
14 him pretty hard, I would think.

15 He's talking about -- I'll be  
16 right with you, Mr. Harrington.

17 He's talking about he's having  
18 financial problems; he's having this kind of  
19 thing. And yet he doesn't take it to the next  
20 level and say, oh, by the way, I'm in  
21 bankruptcy.

22 I'm not saying that necessarily is

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1 a determinative fact, but anybody that's  
2 trying to handle -- that's going to deal with  
3 this case and Mr. Floyd, and the fact that his  
4 character is an issue, they would want to know  
5 that piece of information. Not for purposes  
6 of doing anything with it maybe at that time,  
7 but to get the whole picture of what you're  
8 dealing with.

9 That's my observation right now.  
10 It doesn't really mean a heck of a lot. But  
11 I can understand Ms. Leavitt's concern, that's  
12 all. I'm not encouraging it. I'm just simply  
13 saying I think she's got a point.

14 On the other hand, the answer was  
15 kind of like an economist's answer. On the  
16 one hand this, on the other hand this, and we  
17 still don't resolve it.

18 I'm not here to resolve it and I  
19 don't want this proceeding to attempt to  
20 resolve it unless it comes back to me after  
21 the Second Thursday review.

22 Do you want to add anything to

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1 that, Mr. Shainis?

2 MR. SHAINIS: Just that I  
3 respectfully disagree with your comment.

4 ADMIN. JUDGE SIPPEL: With what  
5 I've said about my observation?

6 MR. SHAINIS: Well, I can stand on  
7 it. I'm not trying to argue with you.

8 ADMIN. JUDGE SIPPEL: I know.

9 MR. SHAINIS: It just seems to me  
10 that the central thing going on in his life  
11 was not necessarily the bankruptcy. That was  
12 certainly a piece of it.

13 The man had just gotten out of  
14 jail.

15 ADMIN. JUDGE SIPPEL: Right.

16 MR. SHAINIS: I think there were  
17 other things: rebuilding his life, coming back  
18 into society. I think the bankruptcy is  
19 probably just another weed in the garden of  
20 life as far as he was concerned at that point  
21 in time.

22 But also, quite honestly, I don't

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1 think he thought it had any relevancy to what  
2 he was going through and trying to take away  
3 his license.

4 ADMIN. JUDGE SIPPEL: I could  
5 understand that. I could understand that.  
6 Under the right circumstances -- and his  
7 credibility, that would be a logical  
8 explanation and an acceptable explanation.  
9 That's one of those things that's just very  
10 difficult to know.

11 I don't think when I was talking  
12 -- he was on speakerphone. He wasn't  
13 represented by Counsel, and I don't think he  
14 had a checklist with him of things to say or  
15 not say. This thing was going on as a  
16 dialogue almost and he was very open.

17 It just leaves me a little bit  
18 quizzical, that's all, which is really  
19 absolutely of no relevance to what we're doing  
20 here today.

21 Mr. Harrington?

22 MR. HARRINGTON: I was just going

1 to point out something I think Mr. Shainis has  
2 already said.

3 The involuntary bankruptcy  
4 petition was filed in summer of 2009, which  
5 was while -- Mr. Floyd was actually  
6 incarcerated in the federal penitentiary at  
7 that time. So I'm sure he had other things on  
8 his mind than bankruptcy, at least a year ago.

9 ADMIN. JUDGE SIPPEL: No question  
10 about that.

11 MR. HARRINGTON: The other thing I  
12 would say is, just to fill in the background  
13 on the bankruptcy, just to keep the record  
14 complete again, it's my understanding -- and  
15 I'm not a bankruptcy lawyer but I've dealt  
16 with a few -- is that a Chapter 7 is a  
17 liquidation proceeding, as compared to a  
18 situation like a Chapter 11 or a Chapter 13 in  
19 which the parties attempt to pay off a portion  
20 of the debts over time and the rest are in  
21 essence waived through the bankruptcy  
22 proceeding.

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1 Chapter 7, when you go through  
2 that, all your assets above those which are  
3 protected by various --

4 MR. SHAINIS: Exemptions.

5 MR. HARRINGTON: -- exemptions are  
6 turned over to the creditors and you're  
7 released from all your debts at that point,  
8 assuming you qualify; you haven't gone through  
9 bankruptcy more frequently than every seven  
10 years. There's some statutory bars. But  
11 other than that -- one would normally expect  
12 that if there is an asset whether it's  
13 disclosed or not, and it ultimately gets  
14 disclosed and put up for sale to raise money  
15 for the creditors, that's what -- the  
16 creditors want that to happen because they pay  
17 off their debts.

18 It's possible in one of these  
19 cases, I've seen it before, where the Court  
20 will then require the parties to seek out  
21 other bidders. If that happens then the Court  
22 would like to get the highest bid to raise the

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1 most money possible.

2 So Evans, I think, is at some risk  
3 for that. But that's an issue which would be  
4 resolved presumably later.

5 MR. SHAINIS: I'll address that,  
6 if I may?

7 Your Honor, Mr. Harrington is  
8 absolutely correct. The Bankruptcy Court  
9 wants to get -- the trustee on behalf of the  
10 Bankruptcy Court wants to get the highest  
11 amount for this translator. Therefore, this  
12 30-day process or 45-day process.

13 Other people can come in and  
14 outbid; basically say, we have an offer of  
15 \$20,000 for --

16 ADMIN. JUDGE SIPPEL: Basically  
17 they hold an auction.

18 MR. SHAINIS: That's exactly  
19 correct. And Mr. Evans can participate and  
20 pay more money.

21 The other thing which I'd like to  
22 point out is that the Commission is more than

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1 -- it can more than avail itself to get  
2 involved in the bankruptcy proceeding.

3 For what purpose, I have no idea.  
4 But if you really think that there's something  
5 untoward going on in the bankruptcy  
6 proceeding, you could get involved in that.

7 MS. LEAVITT: Understood. But as  
8 it affects this proceeding, your deferral  
9 request -- Floyd's deferral request was filed  
10 on the day that the admissions were due,  
11 curiously enough. At that time the  
12 representations were that he had currently  
13 filed for bankruptcy.

14 Just to inject some factual  
15 matters regarding the timeline, Mr. Floyd  
16 stated in the prehearing conference that  
17 sometime in November 2009 he was released to  
18 a halfway house, and in May 2010 he was  
19 released from the halfway house and then  
20 placed on official supervised release.

21 So I think, as the Bureau had  
22 previously stated in its opposition to the

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1 deferral of date, the filing of the notice of  
2 appearance/deferral request was kind of  
3 curious.

4 Because it really threw sand in  
5 the gears of this proceeding in terms of at  
6 least trying to go through the pre-discovery  
7 admissions and gather some factual basis, so  
8 that we could develop the record and determine  
9 exactly who did what in this particular  
10 proceeding where the licensee was in prison at  
11 the time that the applications were filed, so  
12 we hashed that out at the prehearing  
13 conference.

14 I don't think there's anything  
15 else for the Bureau to add at this point,  
16 other than we find it curious that the  
17 admissions were -- the deferral of date and  
18 notice of appearance were filed on the day  
19 that the answers were due to be filed.

20 ADMIN. JUDGE SIPPEL: That may get  
21 into attorney-client privilege, if you want to  
22 comment on that?

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1 MR. SHAINIS: I would be happy to  
2 comment on that.

3 When this case was designated for  
4 hearing I had no intention of getting involved  
5 in it. I had never heard of Eddie Floyd.

6 I looked at it with some  
7 curiosity, since I was Counsel to a licensee  
8 that had very similar issues against it and  
9 ultimately availed itself of a Second  
10 Thursday. But I tossed the designation order  
11 in a circular file in my office, thinking no  
12 more about it.

13 A few days later I got a call from  
14 a client of mine, who was Evans Broadcasting,  
15 asking me -- basically saying, "Are you  
16 interested in getting involved in a hearing?  
17 I'm going to recommend you to Eddie Floyd."

18 I said, "I don't think so but I'll  
19 talk to him."

20 I never got a call from Mr. Floyd  
21 at all.

22 About two or three days before I

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1 filed my notice of appearance I got another  
2 call from my client, who basically said, is  
3 there some way he can buy the station?

4 I said, "Well, there are  
5 essentially three ways. One is if" --  
6 actually, there's four ways. And I described  
7 the four ways to get out of a hearing, which  
8 is exception to the Jefferson Radio Policy.

9 I then got a call from Mr. Floyd  
10 who introduced himself, the first conversation  
11 with Mr. Floyd, and at that point Mr. Floyd  
12 told me that he was in bankruptcy. Bingo, and  
13 then I proceeded to call.

14 So there's nothing mysterious  
15 about something.

16 Point of fact, if you avail  
17 yourself of Second Thursday that's one of the  
18 ways the Commission allows you to get out of  
19 a hearing.

20 Therefore answering admissions,  
21 especially when you're bankrupt and you don't  
22 have any money -- I don't know what you would

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1 do with the answers to the admissions.  
2 Besides which, some of them are privileged  
3 that you're asking for anyway.

4 The Bureau has never denied, at  
5 least yet, that the admissions would be  
6 rendered moot if the Commission approved the  
7 sale pursuant to Second Thursday.

8 If I could get to Part B of the  
9 prehearing statement, which is the explanation  
10 of they've been utilizing the station way  
11 before June 1, 2007?

12 ADMIN. JUDGE SIPPEL: Does anybody  
13 want to respond to what Mr. Shainis has said?

14 MS. LEAVITT: Thank you, Your  
15 Honor. I think at this point the Bureau has  
16 made its position known.

17 ADMIN. JUDGE SIPPEL: Mr.  
18 Harrington?

19 MR. HARRINGTON: No, Your Honor.

20 ADMIN. JUDGE SIPPEL: Okay. Go  
21 ahead, Mr. Shainis. Thank you.

22 MR. SHAINIS: Your Honor, this

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1 whole hearing as far as Eddie Floyd is  
2 concerned is about the revocation of a license  
3 for a translator.

4 I'm not sure how much the Bureau  
5 or you know what a translator is.

6 A translator is essentially a box  
7 the size of a DVD machine or a CD machine and  
8 an antenna. That's it. And it's a license.

9 The relationship between the  
10 licensee Eddie Floyd -- and by the way, a  
11 translator cannot independently program  
12 anything except for 30 seconds that can insert  
13 a commercial an hour. So you cannot originate  
14 programming on a translator.

15 As opposed to what is commonly  
16 referred to as LMAs and TBAs. You need to  
17 have -- the licensee needs to have two full-  
18 time employees, and that's been massaged over  
19 the years, and maintain a public inspection  
20 file.

21 None of that exists when it comes  
22 for the operation of a translator. There is

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1 no public file; there's nothing.

2 It's really an anomaly in the  
3 Commission's rules. Because control -- while  
4 yes, the Commission will give lip service to  
5 it when it comes to this -- there's really no  
6 way to determine if you actually have control.

7 Because what you're doing is you  
8 turn on the switch and there is another  
9 station that is allowing you to program their  
10 -- to retransmit their programming. It's as  
11 simple as that.

12 So the relationship between the  
13 two is sort of, "Okay, I'll do it," and  
14 that's it. It's not a continuing type of  
15 relationship.

16 It's not something that is like in  
17 a time brokerage agreement where the licensee  
18 basically can preempt programming. There's  
19 all this magic language that we use in these  
20 agreements.

21 That doesn't exist in this. You  
22 have a written statement saying, "Okay, You

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1 can program the station." And it can be  
2 terminated at any point by either party.

3 The only thing is you're not  
4 allowed to reprogram the station if it's going  
5 to -- actually, the signal itself, you can't  
6 expand your signal. The principal community  
7 contour must be within the parent signal's  
8 contour, so you can't expand the parent  
9 station's signal.

10 The fact is -- and I haven't  
11 looked yet as to when Mr. Floyd became a  
12 licensee of this station. But as far as his  
13 relationship with Wilks-Reno, I mean he  
14 allowed them to use it and that was all there  
15 was to it.

16 He wasn't monitoring it on a daily  
17 basis. If he would turn on his radio to the  
18 channel that the translator was, he would  
19 listen to the station. There was nothing else  
20 for him to do except to make sure that the  
21 equipment was operational.

22 And if it went dark for more than

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1 10 days, he had to notify the Commission. In  
2 30 days he had to get a Silent STA.

3 Let me add at this point, the  
4 station has been off the air and I did file a  
5 request for a Silent STA with CDBS. That I  
6 believe was filed last week. I'll be happy to  
7 provide a copy of that to all the parties if  
8 anyone deems it necessary.

9 I think that's basically all I  
10 have to say at this point.

11 ADMIN. JUDGE SIPPEL: What is the  
12 -- was there -- is this statement basically  
13 accurate that it was before June 1, 2007 that  
14 Wilks-Reno was utilizing the station?

15 MR. HARRINGTON: Your Honor, if I  
16 could respond?

17 ADMIN. JUDGE SIPPEL: Yes, sir.

18 MR. HARRINGTON: I'll respond to  
19 that issue as well as generally.

20 ADMIN. JUDGE SIPPEL: Okay. Why  
21 don't you just address the issue then.

22 MR. HARRINGTON: Wilks-Reno

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1 acquired its Sparks Nevada FM station, KJZS,  
2 in 2005. I believe Mr. Floyd -- this is based  
3 on CDBS records of the Commission -- acquired  
4 the translator in 2001.

5 It's my understanding that at some  
6 point well prior to 2005, the translator was  
7 used to rebroadcast the signal of the station  
8 that had the call letters KJZS.

9 It's changed again so I don't have  
10 it with me, but we'll call it for this  
11 proceeding KJZS.

12 When we acquired the station there  
13 was just a continuum of the translator  
14 rebroadcasting the KJZS signal.

15 I don't think there was any  
16 special, new negotiation or discussions with  
17 Mr. Floyd. In fact, as far as I can find out,  
18 nobody's ever talked to Mr. Floyd from Wilks'  
19 side.

20 But I think the explanation that  
21 Mr. Shainis has given about how a translator  
22 works is exactly right. The station is

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1 entirely passive in nature. It picks up a  
2 signal on the frequency that's broadcast by  
3 KJZS. It amplifies that signal and  
4 rebroadcasts it on a different frequency, and  
5 the purpose is to fill in holes behind  
6 mountains, in valleys, in areas where the  
7 signal of the main station doesn't go.

8 The third parties who are  
9 licensees of translators, the potential  
10 benefit is only that they are allowed to  
11 originate 30 seconds of programming per hour  
12 in order to defray the cost of operating the  
13 translator.

14 So that is permitted under -- as  
15 Mr. Shainis said, it is permitted under the  
16 rules that they could insert one commercial or  
17 two commercials of their own, as long as  
18 they're under 30 seconds total per hour.

19 Why do people do it?

20 In some cases translators are  
21 owned by individuals. In some cases they're  
22 owned by stations.

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1           In some cases they're owned by  
2 community districts that are set up because  
3 people want to be able to get in radio signals  
4 that they can't get otherwise, and so they're  
5 sort of a community service.

6           But in terms of an overall  
7 business relationship between Wilks-Reno and  
8 Mr. Floyd, there really isn't one.

9           ADMIN. JUDGE SIPPEL: I'm a little  
10 bit at sea here on this.

11           Where would the -- the way you're  
12 describing this, the way it's being described  
13 what a translator is -- where is the  
14 commercial value in it, then?

15           MR. SHAINIS: At one time there  
16 was commercial value. Prior to, I want to  
17 say, 1984 approximately, and I may have the  
18 date wrong, the translator  
19 operator/owner/licensee could go to the  
20 station and say, "You want me to rebroadcast  
21 your signal? You're going to pay me." And  
22 you could get compensation to that.

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1           The Commission, largely as a  
2       result of efforts from the National  
3       Association of Broadcasters, basically  
4       modified and made that illegal. There was a  
5       grandfathering provision and that was phased  
6       out over a period of time.

7           Not so incidentally, translators  
8       are virtually unknown east of the Mississippi.  
9       They're largely utilized west of the  
10      Mississippi, most specifically in mountainous  
11      states like Utah.

12          They're used -- Los Angeles,  
13      interestingly, does have a few stations that  
14      have translators. Mostly of the major cities  
15      do not. San Francisco has a few stations that  
16      use translators.

17          But there is really no economic  
18      incentive for them.

19          About two years ago the Commission  
20      allowed AM stations to utilize FM translators,  
21      basically to save AM radio.

22          Then the Amendment Commission

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